

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION**

**IN RE:** **: CASE NO: 14-00883-EE**  
**: CHAPTER: 13**

**VICKI E. HEWITT**  
**Debtor**

**THE BANK OF NEW YORK MELLON  
FKA THE BANK OF NEW YORK AS  
TRUSTEE FOR THE  
CERTIFICATEHOLDERS OF THE  
CWABS, INC., ASSET-BACKED  
CERTIFICATES, SERIES 2005-3,  
Movant,**

**VS.**

**VICKI E. HEWITT  
DONALD HEWITT, Co-Debtor  
HAROLD J. BARKLEY T1, JR., Trustee  
Respondents.**

**MOTION FOR ABANDONMENT AND RELIEF FROM**  
**AUTOMATIC STAY AND CO-DEBTOR STAY ( REAL PROPERTY )**

THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF THE CWABS, INC., ASSET-BACKED CERTIFICATES, SERIES 2005-3 (“Movant”) hereby moves this Court for abandonment, pursuant to 11 U.S.C. §554, and relief from the automatic stay, pursuant to 11 U.S.C. §362 and Co-Debtor stay pursuant to 11 U.S.C. §1301, with respect to certain real property of the Debtor(s) having an address of **740 Sherwood Drive, Jackson, MS 39216** (the “Property”), for all purposes allowed by the Note (defined below), the **Deed of Trust** (defined below), and applicable law, including but not limited to the right to foreclose. **Donald Hewitt** is/are the Co-Debtor(s) on the loan that is the subject of this Motion. In further support of this Motion, Movant respectfully states:

1. The Debtor(s) has/have executed and delivered or is/are otherwise obligated with respect to that certain promissory note in the original principal amount of **\$129,375.00** (the “Note”). A copy of the Note is attached hereto as Exhibit “A”. Movant is an entity entitled to enforce the

Note.

2. Pursuant to that certain **Deed of Trust** (the “**Deed of Trust**”), all obligations (collectively, the “Obligations”) of the Debtor(s) under and with respect to the Note and the **Deed of Trust** are secured by the Property. A copy of the **Deed of Trust** is attached hereto as Exhibit “B”.

3. Bank of America, N.A. services the loan on the Property referenced in this Motion. In the event the automatic stay in this case is modified, this case dismisses, and/or the Debtor(s) obtain(s) a discharge and a foreclosure action is commenced on the mortgaged property, the foreclosure will be conducted in the name of Movant. Movant, directly or through an agent, has possession of the Note. The Note is either made payable to Movant or has been duly endorsed.

4. As of **December 10, 2014**, the outstanding Obligations are:

Unpaid Principal Balance	\$116,730.44
Unpaid, Accrued Interest	\$3,040.73
Costs	\$6,500.73
<b>Less:</b> Partial Payments	\$0.00
Minimum Outstanding Obligations	\$126,271.90

5. The following chart sets forth the number and amount of postpetition payments due pursuant to the terms of the Note that have been missed by the Debtor(s) as of **December 10, 2014**.

Number of Missed Payments	From	To	Monthly Payment Amount	Total Missed Payments
6	07/01/2014	12/01/2014	\$1,279.43	\$7,676.58
Less postpetition partial payments (suspense balance):				<b>\$0.00</b>

**Total: \$7,676.58<sup>1</sup>**

6. In addition to the other amounts due to Movant reflected in this Motion, as of the date hereof, in connection with seeking the relief requested in this Motion, Movant has also incurred **\$1,026.00** in legal fees and costs. Movant reserves all rights to seek an award or allowance

<sup>1</sup> The total set forth in this paragraph represents only the postpetition principal, interest, and escrow (if any) amounts that are, as of **December 10, 2014**, due but not paid, less any partial payments or suspense balance. It cannot be relied upon as a payoff or reinstatement amount. The postpetition delinquency/reinstatement amount is set forth in the Declaration in Support of Motion for Relief from Automatic Stay filed contemporaneously herewith.

of such fees and expenses in accordance with applicable loan documents and related agreements, the Bankruptcy Code and otherwise applicable law.

7. The estimated market value of the Property is **\$141,500.00**. The basis for such valuation is **Hinds County Tax Assessors (<http://www.co.hinds.ms.us>)**. A copy of the valuation is attached hereto as Exhibit "C".

8. Cause exists for relief from the automatic stay for the following reasons:

- a. Movant's interest in the Property is not adequately protected.
- b. Movant's interest in the collateral is not protected by an adequate equity cushion.
- c. The fair market value of the Property is declining and payments are not being made to Movant sufficient to protect Movant's interest against that decline.
- d. Postconfirmation payments have not been made to Movant.
- e. Pursuant to 11 U.S.C. § 362(d)(2)(A), Debtor(s) has/have no equity in the Property; and pursuant to § 362(d)(2)(B), the Property is not necessary for an effective reorganization.

WHEREFORE, Movant prays that this Court issue an Order terminating or modifying the stay and granting the following:

1. Relief from the stay and Co-Debtor stay for all purposes allowed by the Note, the **Deed of Trust**, and applicable law, including but not limited to allowing Movant (and any successors or assigns) to proceed under applicable non-bankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Property.

2. That the Order be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code.

3. That the 14-day stay described by Bankruptcy Rule 4001(a)(3) be waived.

4. Movant further requests that upon entry of an order granting relief from stay, it be

exempted from further compliance with Fed. Rule Bankr. P. 3002.1 in the instant bankruptcy case.

5. For such other relief as the Court deems proper.

RUBIN LUBLIN, LLC

/s/ Natalie Brown

Date: January 27, 2015

Natalie Brown

MS State Bar No. 100802

Rubin Lublin, LLC

428 North Lamar Blvd, Suite 107

Oxford, MS 38655

(877) 813-0992

nbrown@rubinlublin.com

Attorney for Creditor

CERTIFICATE OF SERVICE

I, Natalie Brown of Rubin Lublin, LLC certify that on the 27<sup>th</sup> day of January, 2015, I caused a copy of the Motion for Relief from Automatic Stay and Co-Debtor stay (Real Property) to be to be filed in this proceeding by electronic means and to be served by depositing a copy of the same in the United States Mail in a properly addressed envelope with adequate postage thereon to the said parties as follows:

Donald Hewitt  
740 Sherwood Drive  
Jackson, MS 39216

Vicki E. Hewitt  
740 Sherwood Drive  
Jackson, MS 39216

Tylvester O.(J) Goss  
Goss & Williams  
1441 Lakeover Road  
Jackson, MS 39213

Harold J. Barkley T1, Jr., Trustee  
P.O. Box 4476  
Jackson, MS 39296

United States Trustee  
501 E. Court Street  
Suite 6-430  
Jackson, MS 39201

I CERTIFY UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Executed on 1/27/15  
By: /s/ Natalie Brown  
Natalie Brown  
MS State Bar No. 100802  
Rubin Lublin, LLC  
428 North Lamar Blvd, Suite 107  
Oxford, MS 38655  
(877) 813-0992  
nbrown@rubinlublin.com  
Attorney for Creditor

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF MISSISSIPPI**

**In re:** )  
 )  
**VICKI E. HEWITT** ) **Case No.: 14-00883-EE**  
**Debtor.** ) **Chapter: 13**  
 )

**DEFAULT ORDER GRANTING RELIEF FROM AUTOMATIC STAY**

This matter is before the Court on the motion of THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF THE CWABS, INC., ASSET-BACKED CERTIFICATES, SERIES 2005-3 for relief from the automatic stay of 11 U.S.C. § 362 and the co-debtor stay of 11 U.S.C. § 1301 (Dkt.#\_\_). Movant represented to the Court that it served the motion in accordance with all applicable rules. No timely response was filed. Accordingly, the motion is granted.

**IT IS THEREFORE ORDERED** and **ADJUDGED** that Movant is granted relief from the automatic stay of 11 U.S.C. § 362 and the co-debtor stay of 11 U.S.C. § 1301 as to the following property:

740 Sherwood Drive, Jackson, MS 39216, as more particularly described on the copy of the Deed of Trust attached hereto.

**##END OF ORDER##**

Submitted by:

/s/ Natalie Brown

Natalie Brown

MS State Bar No. 100802

Rubin Lublin, LLC

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Oxford, MS 38655

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